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Declaration of Covenant and Grant of Easement For
Existing Parcel Sited Private Party Operated and Maintained Stormwater
Management Facilities That Serve Development on the Existing Parcel

<i>Grantor:</i>	
<i>Grantee(s):</i>	Whatcom County
<input type="checkbox"/> <i>Full Legal Description;</i>	
OR	
<input type="checkbox"/> <i>Abbreviated Legal Description: (Insert Lot, Block, & Plat;</i>	
OR	
<i>Quarter/Quarter, Section, Township, & Range;</i>	
OR	
<i>Unit, Building, Phase, & Condo Name)</i>	
<i>Assessor's 16-digit parcel number(s):</i>	

Full Legal Description (complete only if cover page reflects abbreviated legal description, otherwise leave blank):

1. Declaration Effective Date: _____ (Month, Day, Year)
2. Declaration Expiration Date: Indefinite.
3. Parties: The Parties to this Declaration are:
 - (1) The Grantor and Grantor's subsequent successors, heirs, and/or assigns, and
 - (2) The Grantee and any jurisdiction that annexes said parcel in the future.

WHEREAS, the 2012 Washington State Department of Ecology *Stormwater Management Manual for Western Washington* (2012 WSDOE SWMMWW) Volume I on page 3-16 states, in part, the following:

"Declaration of Covenant for Privately Maintained Flow Control and Treatment Facilities

To ensure future maintenance and allow access for inspection by the local government, any flow control [and/or conveyance per 2012 WSDOE SWMMWW Minimum Requirement No. 7] and treatment [per 2012 WSDOE SWMMWW Minimum Requirement No. 6] facilities for which the applicant identifies operation and maintenance to be the responsibility of a private party must have a declaration of covenant and grant of easement. After approval by the local government, the declaration of covenant and grant of easement must be signed and recorded at the appropriate records office of the local government.

Declaration of Covenant for Privately Maintained On-site Stormwater Management BMPs [OSBMPs]

To ensure future maintenance and allow access for inspection by the local government, any On-site Stormwater Management BMPs [per 2012 WSDOE SWMMWW Volume I Glossary definition and 2012 WSDOE SWMMWW Minimum Requirement No. 5] for which the applicant identifies operation and maintenance to be the responsibility of a private party must have a declaration of covenant and grant of easement. Design details, figures, and maintenance instructions for each On-site Stormwater Management BMP shall be attached. A map showing the location of newly planted and retained trees claimed as flow reduction credits shall also be attached.

This applies to every lot within a subdivision on which an On-site Stormwater Management BMP is proposed. After approval by the local government, the declaration of covenant and grant of easement must be signed and recorded at the appropriate records office of the local government.”; and

WHEREAS, as of the Declaration Effective Date above, the following 2012 WSDOE SWMMWW-designed stormwater management facilities exist on subject parcel (check all that apply):

- Flow control and/or conveyance,
- Treatment,
- On-site best management practices (OSBMP),

to serve development on subject parcel; and

WHEREAS, Grantee has approved said facilities; and

WHEREAS, this Declaration does not apply to any existing non-2012 WSDOE SWMMWW-designed stormwater management facilities that exist on said parcel; and

WHEREAS, for the purposes of this Declaration, 2012 WSDOE SWMMWW Minimum Requirement No. 5 applies to OSBMPs; and

WHEREAS, for the purposes of this Declaration, 2012 WSDOE SWMMWW Minimum Requirement No. 6 applies to stormwater “treatment” facilities; and

WHEREAS, for the purposes of this Declaration, 2012 WSDOE SWMMWW Minimum Requirement No. 7 applies to stormwater “flow control and/or conveyance” facilities; and

WHEREAS, if OSBMPs exist on subject parcel, Exhibit A to this Declaration reflects the design details, figures, and maintenance instructions for each OSBMP; and

WHEREAS, if Grantee has claimed OSBMP-related flow reduction credits for newly planted and/or retained trees, Exhibit B map to this Declaration shows the location of all newly planted and/or retained trees that Grantee has claimed as OSBMP-related flow reduction credits;

NOW THEREFORE,

1. Grantor hereby declares as follows:

1.1. The routine operation and maintenance of said facilities will be the responsibility of a private party.

1.2. For on-parcel stormwater flow control and/or conveyance facilities, and/or stormwater treatment facilities, Grantor or Grantor’s duly appointed agent shall operate and maintain said facilities in accordance with the _____
_____ (firm name) prepared *Operations and Maintenance Manual* for _
_____ (project name)

- 1.3. For OSBMPs, Grantor or Grantor's duly appointed agent shall operate and maintain said facilities in accordance with Exhibit A.
 - 1.4. Grantor authorizes Grantee or Grantee's duly appointed agent(s) to periodically enter onto said parcel to inspect and assess said facilities' physical condition and functionality, and to determine if Grantor or Grantor's duly appointed agent has accomplished any Grantee or Grantee's duly appointed agent(s)' directed maintenance and/or repair of said facilities as determined per paragraph no. 1.5 below. Paragraph no. 2.1 advance visitation notice provisions below also apply.
 - 1.5. If, after conducting physical condition inspection and assessment of said facilities, Grantee or Grantee's duly appointed agent(s) determines that said facilities' maintenance and/or repair is necessary, Grantor or Grantor's duly appointed agent will accomplish same within thirty (30) calendar days after receipt of a formal corrective action notice from Grantee or Grantee's duly appointed agent(s). Grantee may, in its sole discretion, extend said thirty day time period upon receipt of Grantor's or Grantor's duly appointed agent's written formal request for same, given good cause.
 - 1.6. If Grantor or Grantor's duly appointed agent fails to timely accomplish said facility maintenance and/or repair in accordance with said formal corrective action notice, or any Grantee-approved time extensions thereto, Grantor authorizes Grantee or Grantee's duly appointed agent(s) to access onto said parcel to accomplish said facility maintenance and/or repair. Paragraph no. 2.1 advance visitation notice provisions below also apply.
 - 1.7. If at any time that Grantee or Grantee's duly appointed agent(s) reasonably determines that said facilities pose an immediate hazard to life and limb, or endanger property, or adversely affect the safety and operations of a public way, due to failure of, damage to, or non-maintenance of said facilities, and that the situation is so adverse as to preclude advance visitation notice to Grantor, Grantor authorizes Grantee or Grantee's duly appointed agent(s), without prior advance visitation notice to Grantor by Grantee or by Grantee's duly appointed agent(s), to access onto said parcel to take any mitigation or preservative actions that Grantee or Grantee's duly appointed agent(s) determines necessary.
 - 1.8. Grantor will reimburse Grantee for Grantee's costs to accomplish maintenance and/or repair of said facilities per paragraph no. 1.6 above, and for emergency response mitigation or preservation actions per paragraph no. 1.7 above.
2. Grantee hereby declares as follows:
 - 2.1. Unless the circumstances described in paragraph no. 1.7 above exist, Grantee or Grantee's duly appointed agent(s) shall provide to Grantor a minimum of two work days advance notice of any visit.
 3. The Parties further agree that this Declaration:
 - 3.1. Shall run with said parcel and be binding upon the Parties, and
 - 3.2. May not be amended or abrogated, in part or entirely, without the express written consent of the Parties, and
 - 3.3. Shall survive and apply to any subsequent divisions of subject parcel.

